

# FREQUENTLY ASKED QUESTIONS

## Regarding the Revision of R.61-15 • Effective May 25, 2012

- 1. Were fees increased in the revision?** No. There are no proposed increases or new fees. The fees remain as they were in the 2003 revision (\$500 non-refundable filing fee, etc.).
- 2. What determinations are being deleted?** Non-applicability determinations have been deleted for non-medical projects, such as refinancing of existing debt, parking garages, laundries, roof replacements, computer systems, telephone systems, air conditioning systems; and the upgrading of medical facilities which do not involve additional square feet to the facility or additional health services (Section 105.5). This also includes the construction of a medical office building.  
  
However, except for refinancing of existing debt, written notification shall be provided to the S.C. DHEC Division of Health Facilities Construction prior to undertaking a non-medical project. They may be reached at (803) 545-4205.
- 3. How long will an exemption or non-applicability be valid?** One year (previously six months). (Section 104.3, Section 105.3)
- 4. Has the total project cost threshold for medical equipment used for diagnosis or treatment changed?** No, a non-applicability (in writing) is still required for such equipment if the total project cost is not in excess of \$600,000. However, this determination is only required when any question exists as to whether or not the total project cost is below the threshold. (Section 105.1.b)
- 5. Have further changes been made for the replacement of like equipment?** No, the verbiage in Section 104.1 is identical to what has been in effect since the Certificate of Need (CON) Bill (Act 278) was effective on July 1, 2010.
- 6. Is a Certificate of Need (CON) required for a change of ownership?** No, not strictly for the mere acquisition or change in ownership of an existing health care facility, service, or equipment (Section 102.4). However, should the acquiring party renovate or expand the facility or services of the offices being acquired, or seek to relocate or upgrade the equipment that is part of the acquisition or change of ownership, then a written determination may be needed.

It is the Department's view that the legislative intent in passing Act 278 was to streamline the CON process and to take some things out of CON review altogether, rather than to require more CON review. The Department therefore interprets the deletion of subsection (7) as removing from CON review all acquisitions or changes of ownership of health care facilities, services, and equipment that are already in existence, operational, and providing services in a particular service area, and which already underwent the review and obtained the approval that was appropriate under the law at the time they first entered the relevant service area.

Section 604 still provides that a CON is nontransferable, and that a sale or change of ownership of the entity holding the CON will result in voidance of the CON. Therefore, for facilities, services, and equipment which have previously undergone CON review, the CON must be fully implemented or fulfilled prior to a change of ownership.

Further, although CON review is no longer required for changes of ownership, changes in ownership of a health care facility must be reported to the Department's Division of Health Licensing within thirty (30) days of the change (803-545-4370). Additionally, health care facilities which are certified for participation in the Medicare or Medicaid program still must report any changes of ownership to the Department's Bureau of Certification (803-545-4205). Please contact either of those two divisions of the Department for any further questions.

**7. How is S.C. DHEC handling replacement of like equipment?** Replacement of like equipment is addressed in the revised regulations under Exemption Determinations, Section 104.1.a. The wording is the same as the wording in Section 44-7-170(A)(3) of Act 278 that was implemented July 1, 2010. This section states that “the replacement of like equipment for which a Certificate of Need has been issued which does not constitute a material change in service or a new service” is exempt from CON review. Therefore, if you are seeking to replace equipment for which a CON was previously issued with like equipment, and such replacement does not constitute a material change in service or a new service, you may qualify for an exemption.

If you are seeking to replace equipment for which a CON was not previously issued, then you do not qualify for an exemption, but you might qualify for a non-applicability determination pursuant to Section 105.1.a in the revised regulations (Section 44-7-170(B)(1) from Act 278). That is, you might qualify for a non-applicability determination if the equipment you are seeking to replace meets the definition of “like equipment with similar capabilities” found in Section 44-7-130(21) of the Act and Section 103.16 of the revised regulations.

The definition of “like equipment with similar capabilities” was amended by Act 278. In order to qualify as “like equipment with similar capabilities,” you must demonstrate that the new equipment:

- Has the same or similar functional and technological capabilities as the equipment to be replaced;
- Will be used for the same or similar diagnostic, therapeutic, or treatment purposes as the equipment to be replaced; and
- Will not constitute a material change in service or a new service.

## Other Frequently Asked Questions

**1. What do I need to do to open a new home health agency?** A CON would be required. Note the definition of a Home Health Agency, as defined by the S.C. DHEC Division of Health Licensing is:

*Part-time or intermittent skilled nursing care as ordered by a physician or podiatrist and provided by or under the supervision of a registered nurse and at least one other therapeutic service listed below: (a) physical, occupational, or speech therapy; (b) medical social services; (c) home health aide services; (d) other therapeutic services; (e) medical supplies as indicated in the treatment plan and the use of medical appliances, to include durable medical equipment and (f) any of the above items and services provided on an outpatient basis under arrangements made by the home health agency with a hospital, nursing home or rehabilitation center and the furnishing of which involves the use of equipment of such a nature that the items/services cannot readily be made available to the individual in his/her home, or which are furnished at one of the above facilities while the patient is there to receive such items or services. Transportation of the individual in connection with any such items or services is not included.*

**2. Is a CON required to provide private duty nursing services?** No.

**3. Is a CON required to provide in home care services, such as preparing meals or bathing an individual?** No.